U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

[redacted]

Date: APR 2 2 2015 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification under section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. According to Part 6 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner, who holds a doctorate in Mechanical Engineering, seeks employment as a researcher. At the time of filing, the petitioner was a postdoctoral researcher at his alma mater, The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a brief. Upon review of the entire record, we agree with the director's findings.

I. LAW

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The record reflects that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

A supplementary notice regarding the regulations implementing the Immigration Act of 1990, P.L. 101-649, 104 Stat. 4978 (Nov. 29, 1990) (IMMACT90), published at 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991), states, in pertinent part:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

In re New York State Dept of Transportation, 22 I&N Dec. 215, 217-18 (Act. Assoc. Comm'r 1998) (*NYSDOT*), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, a petitioner must establish that he seeks employment in an area of substantial intrinsic merit. *Id.* at 217. Next, a petitioner must establish that the proposed benefit will be national in scope. *Id.* Finally, the petitioner seeking the waiver must establish that he will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications. *Id.* at 217-18.

As stated by the director in his decision, the petitioner has established that his work as a researcher in the field of mechanical engineering is in an area of intrinsic merit and that the proposed benefits of his research would be national in scope. It remains, then, to determine whether the petitioner has presented "a national benefit so great as to outweigh the national interest inherent in the labor certification process." *Id.* at 218. Assurances of the petitioner's future contributions will not establish eligibility for the third prong of the national interest waiver test absent a past record that justifies projections of future benefit to the national interest. *Id.* at 219.

The overall importance of a petitioner's area of expertise carries weight, but must be examined in the context of a review of the petitioner's own qualifications. *Id.* at 220. At issue is whether this petitioner's contributions in the field are of such significance that he merits the special benefit of a national interest waiver, a benefit separate and distinct from the visa classification he seeks. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. We evaluate the petitioner's original innovations, such as demonstrated by a patent, on a case-by-case basis. *Id.* at 221, n. 7.

II. ANALYSIS

The date of filing of the instant petition is June 26, 2012. The evidence the petitioner submitted with the initial filing included published and presented research and testimonial letters. The director issued a notice of intent to deny on March 12, 2014. The director explained his basis for concluding why the petitioner's evidence was insufficient and provided examples of the types of evidence which the petitioner could submit to "establish a past record of specific prior achievement with some degree of influence on...the field." For example, the director acknowledged that the reference letters are useful for explaining the evidence or providing an opinion on a certain subject matter, but concluded that "they do not equate or constitute the fact itself." *See Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"); *see also Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). The director further explained that the petitioner had not submitted sufficient evidence that his prior achievements have resulted in some degree of influence in the overall field of mechanical engineering. The director included a number of types of "objective" evidence "by which USCIS [U.S. Citizenship and Immigration Services] may measure your influence in mechanical engineering." In addition, the director informed the petitioner that a petitioner must establish eligibility for an immigration benefit at the time of filing the petition, USCIS cannot consider the benefit under a new set of facts. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). *See also Matter of Izummi*, 22 I&N, Dec. 169 (Assoc. Comm'r 1998).

In response to the notice, the petitioner submitted additional evidence, including new testimonial letters, a list of citations from dated April 4, 2014, additional publications, printouts for the and two emails. Some of the evidence had been previously submitted and some postdated the date of filing. As stated above, evidence which originates after the initial date of filing is relevant only insofar as it relates to the petitioner's eligibility at the time of filing. *Id.*

The director denied the petition on August 15, 2014. The director found that:

> Although you have conducted research and have gained experience, training, and participated in professional activities, you have not submitted evidence as to fact [*sic*] of your previous documented achievements in mechanical engineering showing that you serve the United States to a greater degree than would an available U.S. mechanical engineer with a Ph.D. degree in mechanical engineering, nor have you presented any evidence as to fact [*sic*] of your overall influence in mechanical engineering that could not be placed on an application for alien labor certification.

The director again provided a number of examples of the types of objective evidence which could establish the petitioner's "measurable influence in the overall field of mechanical engineering." The director concluded that, absent independent, objective evidence, the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner asserts that the director's findings were too vague and that the director mistakenly believed the petitioner's field to be "taxation research," rather than mechanical engineering. Regarding the petitioner's assertion that the director's decision was too vague, as discussed above, the director indicated that the petition lacked objective, documented evidence which establishes the petitioner's impact on the field of mechanical engineering. The petitioner also asserts that the director "misunderstood the nature of" the petitioner's field and includes what he identifies as direct quotes from the director's conclusion which use the term "taxation" on three separate occasions. The director's decision, however, only refers to the petitioner's field as mechanical engineering and does not reference taxation research. The petitioner's remaining assertion on appeal is that the director did not sufficiently address the articles that cite the petitioner's work. We will address those articles below.

With regard to the petitioner's published research, in the initial filing, the petitioner stated that he had authored one book chapter and four journal articles and had two additional book chapters which had been accepted for publishing. The petitioner submitted:

- a copy of the book chapter '[redacted]" which [redacted] accepted for publication;
- an article '[redacted]" with an email that confirms receipt of the article "for consideration for publication in [redacted]"
- an unpublished manuscript with an accompanying email invitation to write a book chapter for [redacted]
- an abstract for the [redacted];
- an abstract from the [redacted]
- an unpublished article with an accompanying email indicating that the [redacted] would reconsider the article for publication; and
- two additional unpublished articles.

The petitioner does not assert on appeal that his publications and presentations by themselves are indicative of his impact in the field. While the petitioner's research has value, any research must be original and likely to present some benefit if it is to receive funding and attention from the scientific community. In order for a university, publisher, or grantor to accept any research for graduation, publication, or funding, the research must offer new and useful information to the pool of knowledge. Not every researcher who performs original research that adds to the general pool of knowledge has inherently impacted the field as a whole.

The petitioner has also presented at conferences. Many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and to network with other professionals. These meetings and conferences are promoted and sponsored by professional associations, educational institutions, employers, and government agencies. Although presentation of the petitioner's work demonstrates that his research findings were shared with others and may be acknowledged as original based on their selection for presentation, the petitioner has not provided documentary evidence to

establish, for instance, that his work at the time of filing had been frequently cited by independent researchers, or that his findings have otherwise influenced the field as a whole.

Regarding the petitioner's awards for his research presentations, recognition for achievements is an element that can contribute toward a finding of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(ii). However, by statute, "exceptional ability" is not, by itself sufficient cause for a national interest waiver. *Id.* at 218. Some awards may serve as evidence of the petitioner's impact and influence on his field, but the petitioner has not demonstrated that the awards he received are indicative of his influence on the field as a whole. The petitioner does not assert on appeal that the director should have afforded more weight to the petitioner's awards. Regardless, the petitioner's awards consist of travel grants and recognition of his presentations prior to or upon dissemination in the field. As such, these awards do not take into account the ultimate impact of the petitioner's presentations.

As stated above, the petitioner asserts on appeal that the director did not take into account the articles that cite the petitioner's work. Initially, the petitioner stated that his findings had garnered moderate citation, but did not submit a citation report with the initial filing. The petitioner did, however, submit five papers that cite to his work. and authored two of the papers which cite the petitioner's article from the The citing authors presented one of their papers at the In this presentation, the authors cite the petitioner's work as one of four concurrent modeling methods before presenting their own new multiscale dynamic modeling approach that solves prior challenges. The second paper does not contain any information to establish that it was published or presented. This paper cites the petitioner's work as one of seven large models. and cite the petitioner's work as one of between six and twelve sources for various propositions. and coauthored two articles that cite a conference paper which Mr. co-authored with the petitioner. Accordingly, these articles are self-citations. Self-citation is a normal, expected practice, but does not demonstrate the response of independent researchers.

Although the petitioner submitted a list of citations from in response to the director's notice of intent to deny, it was dated April 4, 2014 and includes articles and citations that occurred after the date of filing. While the petitioner focuses on the total number of citations in the aggregate, citation numbers for individual articles are more probative of that article's influence. Further, the list does not indicate which citations are self-citations. The petitioner has not established that the limited number of independent cites per article for his published works is indicative of an influence on the field as a whole. Moreover, as discussed above, the citing articles are not indicative of independent researchers relying on the petitioner's work rather than referencing it with several other articles as background material.

The petitioner submitted a printout for the project which lists the petitioner as one of 16 people under the heading of "Project Lead." The petitioner does not reference this evidence on appeal. According to a letter from Dr. of the the petitioner's "work has been embedded in the open source software of

' Dr. Chief Software Architect at the and an administrator for asserts that while working on the petitioner "developed a highly parallelizable divide-and-conquer algorithm for use in for constant temperature simulation of biopolymers." While Dr. explains that this work has the "potential to have a huge impact" and can be used by clinical or academic researchers for a better understanding and analysis of disease mechanisms and drug delivery," he does not provide examples of how the petitioner's algorithms are already influencing the field.

The petitioner also submitted a printout which indicates that he "volunteer[ed] to be a [r]eviewer for" the . On appeal, the petitioner does not assert that the director failed to take this evidence into account. The petitioner has not demonstrated that reviewing four technical papers for the conference is indicative of the petitioner's influence on the field of engineering.

Regarding the testimonial letters the petitioner submitted, many of them were from the petitioner's colleagues. On appeal, the petitioner does not specifically contest the director's findings that the letters by themselves are insufficient. The letters speak very highly of the petitioner and indicate that he is a talented researcher with a promising future. Professor from the confirms that the petitioner's paper at the was selected as the best paper, but there is no evidence demonstrating that the petitioner's findings once disseminated have influenced the field. Dr. a senior research scientist at the states that the petitioner is "an extraordinary productive young scientist working on cutting-edge research topics." Dr. , a distinguished professor at the finds that the petitioner "has been actively participating in academic research efforts" and that "[t]he application of his developed algorithms...enables the study of significantly more complex problems with higher fidelity and accuracy." USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

We grant national interest waivers on a case-by-case basis; there is no blanket waiver for a field of specialization or the sciences in general. *Id.* at 217. While we recognize the importance of scientific research, including the petitioner's research, not every scientist who performs original research that adds to the general pool of knowledge in the field inherently serves the national interest to an extent that is sufficient to waive the job offer requirement. Again, the petitioner must establish that his work has had some degree of influence on the field as a whole. *NYSDOT,* 22 I&N Dec. at 219, n. 6. The record establishes that the petitioner is working on projects that have potential, but does not contain sufficient documentary evidence to establish the impact of the petitioner's work on the field.

The petitioner did not specifically identify any erroneous conclusion of law or statement of fact in the director's decision beyond failing to address the citing articles, which we have addressed above. The petitioner did not provide any additional evidence to overcome the director's findings.

Accordingly, the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

III. CONCLUSION

A plain reading of the statute indicates that it was not the intent of Congress that every advanced degree professional or alien of exceptional ability should be exempt from the requirement of a job offer based on national interest. The petitioner has not shown that his past record of achievement is at a level sufficient to waive the job offer requirement which, by law, normally attaches to the visa classification sought by the petitioner. While the petitioner need not demonstrate notoriety on the scale of national acclaim, the national interest waiver contemplates that his influence be national in scope. *Id.* at 217, n.3. More specifically, the petitioner "must clearly present a significant benefit to the field of endeavor." *Id.* at 218. *See also id.* at 219, n.6 (the alien must have "a past history of demonstrable achievement with some degree of influence on the field as a whole"). On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.